

JAN 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JONGEUL KIM and KYUNG SOOK
KIM HA,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 04-74183

Agency Nos. A077-823-342
A077-823-329

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008^{**}

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Jonguel Kim and Kyung Sook Kim Ha, husband and wife and natives and
citizens of South Korea, petition for review of the Board of Immigration Appeals'

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) order denying their motion to remand and dismissing their appeal from an immigration judge’s (“IJ”) decision denying their application for cancellation of removal. We deny the petition in part and dismiss it in part.

We lack jurisdiction to review the BIA’s discretionary determination that the Kims failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003). We also lack jurisdiction to review the BIA’s denial of the Kims’ motion to remand to introduce further evidence of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006) (holding that 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from reviewing the denial of a motion to reopen where “the only question presented is whether [the] new evidence altered the prior, underlying discretionary determination that [the petitioner] had not met the hardship standard”) (internal quotations and brackets omitted).

The BIA did not abuse its discretion in denying the Kims’ motion to remand to pursue Mr. Kim’s withdrawn asylum application because the Kims did not show their prior counsel was ineffective in withdrawing the application or that they were prejudiced by counsel’s performance. *See Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005) (reviewing for abuse of discretion the denial of a motion to remand); *Ortiz v. INS*, 179 F.3d 1148, 1153 (9th Cir. 1999) (“Due process

challenges to deportation proceedings require a showing of prejudice to succeed” and “[p]rejudice is found when the performance of counsel was so inadequate that it may have affected the outcome of the proceedings”).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.